IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DARIN JEROME GATSON, Appellant.	)	No. 63434-8-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION
	)	FILED: May 3, 2010

BECKER, J. — Darin Gatson pleaded guilty to one count of possession of a stolen vehicle. The sentencing court included in his offender score a 1992 New York conviction for third degree robbery after finding that it was comparable to second degree robbery in Washington. Gatson contends, on grounds of collateral estoppel, that the New York conviction should not have been counted as part of his offender score because it was not counted when a Washington court sentenced him for another offense in 2006. Alternatively, he contends it was not comparable to a Washington offense. We affirm.

At the sentencing hearing, Gatson objected unsuccessfully on both grounds to inclusion of the New York conviction in his offender score. The trial

court calculated a standard range of 22 to 29 months based on an offender score of 7, instead of Gatson's calculation of 17 to 22 months based on an offender score of 6. The trial court sentenced Gatson to 26 months. Gatson appeals.

Under the doctrine of collateral estoppel, "when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot be relitigated between the same parties in any future litigation." State v. Vasquez, 148 Wn.2d 303, 308, 59 P.3d 648 (2002). The party asserting collateral estoppel bears the burden of proving: (1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice. Vasquez, 148 Wn.2d at 308.

The record includes a copy of a sentencing document from a case in which Gatson was sentenced in 2006 for theft and assault. The New York robbery conviction is listed and crossed out by a handwritten line. Without more, this document is insufficient to establish that the 2006 sentencing court decided to exclude his New York conviction on the merits. It does not prove that the court found the New York conviction was not comparable or that it had washed out. It is equally likely that the court in 2006 did not have sufficient

documentation to determine whether or not the New York conviction should be included. Because Gatson has not carried his burden of proving that the 2006 sentence represented a determination on the merits of an issue of ultimate fact identical to an issue litigated in the present case, we reject his argument that the doctrine of collateral estoppel barred the trial court from counting the New York offense.

As to comparability, an out-of-state offense is legally comparable to a Washington offense if the elements are either identical or the Washington statute is broader. State v. Morley, 134 Wn.2d 588, 606, 952 P.2d 167 (1998). Gatson shows that the Washington robbery statute is different from New York's, but all of the differences he points out arguably would only make the Washington statute broader, not narrower. Under Morley, his argument fails.

Because the offenses are legally comparable, we need not engage in a factual examination of Gatson's 1992 New York conviction. State v. McIntyre, 112 Wn. App. 478, 483, 49 P.3d 151 (2002).

Affirmed.

Becker, J.

WE CONCUR:

Leach, A.C.J.

Cox, J.